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Senate Bill _____
By _____

House No. HB0729
By Stamps

AN ACT to enact the "Federal Mandates Act".

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. This act shall be known and may be cited as the "Federal Mandates Act of 1995".

SECTION 2. (a) In enacting this act, the general assembly employs its legislative authority to establish that the people of the state of Tennessee, acting through their elected officials in Tennessee state government, have the responsibility and authority to establish policy in and for Tennessee pertaining to federal programs mandated in federal statutes.

(b) The intent of the general assembly is to assure the primacy of the state of Tennessee's legal and political authority to implement in and for Tennessee the policy mandated by federal statutes and to vigorously challenge and scrutinize the extent and scope of authority asserted by federal executive branch agencies when federal agency actions and interpretations are inconsistent with Tennessee policy and exceed the lawful authority of the federal government or are not required by federal law.

(c) In this connection the Tennessee general assembly finds and declares that:

(1) The power to implement federal policies in and for Tennessee is central to the ability of the people of Tennessee to govern themselves under a federal system of government; and

(2) Any implementation of federal policies in and for Tennessee by federal executive branch agencies that is contrary to fundamental notions of federalism and self-determination must be identified and countered.

SECTION 3. The general assembly further finds and declares that:

(1) There is an urgent need to modify federal mandates because the implementation of these mandates by the state wastes the financial resources of local governments, the citizens of Tennessee and the state and does not properly respect the rights of the local governments, citizens and state.

(2) The state government has an obligation to the public to do what is necessary to protect the rights of Tennessee citizens under federal law while minimizing or eliminating any additional cost or regulatory burden on any citizen of the state.

(3) The Tenth Amendment to the United States Constitution directs that powers that are not delegated to the United States are reserved to the states or to the people. Tennessee, as one of the sovereign states within the union, has constitutional authority to enact laws protecting the environment of the state and safeguarding the public health, safety, and welfare of the citizens of Tennessee. However, this authority has too often been ignored by the federal government, as the federal government has intruded more and more into areas that must be left to the states. It is essential that the dilution of the authority of state and local governments be halted and that the provisions of the Tenth Amendment be accorded proper respect.

(4) Current federal regulatory mandates, as reflected in federal administrative regulations, guidelines, and policies, often do not reflect the realities of the Southeastern United States region, and federal regulators frequently do not understand the needs and priorities of the citizens of Tennessee.

(5) The citizens of this state can create and wish to create innovative solutions to Tennessee's problems, but the current manner in which legal challenges to state policies and federal programmatic substitutions of state programs are handled does not allow the state the flexibility it needs. It is not possible for the state of Tennessee to effectively and efficiently implement the provisions of federal statutes unless the burden to prove the insufficiency of the state's efforts to implement federal requirements is shifted to the person or agency who asserts such insufficiency.

(6) The provisions of this act will better balance the exercise of the powers of the federal government and the powers reserved to the states. In addition, the application of this act ultimately will bring about greater protection for the state and the nation, because it will direct the state to implement federal statutes at the least possible cost, thereby freeing more moneys for other needs.

(7) The purpose of this act is to ensure that federal mandates implemented in Tennessee comply with state policy as established by the general assembly.

SECTION 4. As used in this act, unless the context clearly otherwise requires:

(1) "Comptroller of the Treasury" means the comptroller of the treasury appointed by the general assembly pursuant to Article VII, Section 3 of the Constitution of Tennessee and whose duties are generally defined at Tennessee Code Annotated, Title 8, Chapter 4;

(2) "Department" means the department of finance and administration established at Tennessee Code Annotated, Title 4, Chapter 3, Part 10;

(3) "Federal Statute" means a federal statute that is in accord with the United States Constitution imposing mandates on state or local governments, which may include, but is not limited to, the following:

(A) The federal "Safe Drinking Water Act", 42 U.S.C. §300f, et seq., as amended;

(B) The federal "Clean Air Act", 42 U.S.C. §7401, et seq., as amended;

(C) The federal “Water Pollution Control Act”, 33 U.S.C. §1251, et seq., as amended;

(D) The federal “Solid Waste Disposal Act”, 42 U.S.C. §3251, et seq., as amended;

(E) The federal “Resource Conservation and Recovery Act of 1976”, 42 U.S.C. §6901, et seq., as amended;

(F) The federal “Comprehensive Environmental Response, Compensation, and Liability Act of 1980”, 42 U.S.C. §9601, et seq., as amended;

(G) The federal “Superfund Amendments and Reauthorization Act of 1986”, 42 U.S.C. §9601, et seq., 10 U.S.C. §2701, et seq., as amended;

(H) The federal “Endangered Species Act of 1973”, 16 U.S.C. §1531, et seq., as amended;

(I) The federal “Asbestos School Hazard Abatement Statute”, 20 U.S.C. §4011, et seq., as amended;

(J) The federal “Brady Handgun Violence Prevention Act of 1993”, 18 U.S.C., §921, as amended;

(K) The federal “Commercial Motor Vehicle Safety Act of 1986”, 49 U.S.C. §2501, et seq, as amended;

(L) The federal “Family and Medical Leave Act of 1993”, 29 U.S.C. §2601, et seq., as amended;

(M) The federal “Emergency Planning and Community Right-to-Know Act”, 42 U.S.C. §11001, et seq., as amended;

(N) The federal, State, and Local Partnership for Education Improvement Program, 20 U.S.C. §1751, et seq., as amended;

(O) The federal “National Voter Registration Act of 1993”, 42 U.S.C. §1973, as amended;

(P) The federal School Lunch Program and School Breakfast Program, 42 U.S.C. §§1751 and 1773, as amended;

(Q) The federal Social Services and Medicaid Requirements, 42 U.S.C. §1396, as amended;

(R) Federal Highway Safety Programs; and

(S) The federal “Intermodal Surface Transportation Efficiency Act of 1991”, 49 U.S.C. §101, et seq, as amended;

(4) “Office of legislative legal services” means the office of legal services for the general assembly established at Tennessee Code Annotated, Title 3, Chapter 12, Part 1; and

(5) “Office of legislative services” means the office of legislative services established at Tennessee Code Annotated, Title 3, Chapter 11, Part 1.

SECTION 5.

(a) Any state officer, official, or employee charged with the duty of implementing any federal statute shall implement the law as required by the federal statute in good faith and exercising a critical view toward the provisions of any federal regulation, guideline, or policy in order to identify those provisions of any federal regulation, guideline, or policy that are inconsistent with Tennessee policy or do not advance Tennessee policy in a cost-effective manner.

(b) Any agency of the executive department of state government that is authorized to develop a state program to respond to any mandates contained in a federal statute shall develop the state program and promulgate any necessary regulations using the following criteria:

(1) State programs shall be developed by the state agency to meet the requirements of federal statutes in good faith with a critical view toward any federal regulations, guidelines, or policies; and

(2) State programs shall be developed with due consideration of the financial restraints of local governments, the citizens of Tennessee, and the state, including the limitations imposed by Article II, Section 24, of the State Constitution.

(c) Any state program that implements the goals of the federal statute shall use the most efficient method possible, with careful consideration given to the cost of the program and the impact of the program on Tennessee citizens, and local governments, and the long-range public health, safety, and welfare of citizens of the state.

SECTION 6.

(a) The comptroller of the treasury shall report to the general assembly regarding the proposed implementation of this section.

(b) If any state program is authorized or mandated by a federal statute, all state funding for the program is dependent upon a finding by the general assembly that:

(1) The state program is necessary to protect the public health, safety, and welfare;

(2) The state program is necessary to implement the federal statute;

(3)

(A) The operation of the state program benefits the state by providing a cost-effective implementation of the federal statute by the state, by local government, and by business; or

(B) The state program benefits the state, local government, and business by providing a cost-effective means to meet a higher public health, safety, and welfare standard established under state law; and

(4) The state program is not in conflict with either the United States Constitution or the Tennessee Constitution. The general assembly shall demonstrate in the finding that a program is in compliance with the United States

and Tennessee Constitutions by citing the constitutional provisions that authorize the state program.

(c) The general assembly, after receiving a recommendation from the comptroller of the treasury, shall determine whether a state program is necessary and shall exercise a critical view toward the interpretation of the federal statute found in federal regulations, guidelines, or policies. A finding by the general assembly that a state program authorized or mandated by a federal statute is necessary to protect the public health, safety, and welfare or is required by federal statute may not be based solely on requirements found in regulations, guidelines, or policies of a federal agency.

(d) Prior to recommending to the general assembly any budget for a state agency that is charged with implementing federal mandates, the department of finance and administration shall require that the state agency provide information regarding any monetary savings for the state and any reduction in regulatory burdens on the public and on local governments that could be or have been achieved through the development of state policies that meet the intent of the federal statute but do not necessarily follow all applicable federal regulations, guidelines, or policies. The state agency shall also provide advice to the department of finance and administration regarding any changes in state statutes that are necessary to provide the state agency the authority to implement state policies in such a way as to create additional savings or greater reductions in regulatory burdens. The department of finance and administration shall review and compile the information received from state agencies pursuant to this section and shall include recommendations in its annual budget request to the general assembly based upon such information.

SECTION 7.

(a) The staff of the office of legal services and the office of legislative services shall jointly prepare one (1) or more requests for information regarding federal mandates

no later than August 30, 1995. The requests for information shall be directed to persons involved with or affected by federal mandates, including but not limited to the following:

(1) Public and private institutions of higher education both within and outside of Tennessee and individuals in such institutions who have developed a high degree of expertise in the subjects of federalism and federal mandates;

(2) Attorneys in private practice who have dealt with federal mandate litigation or research; and

(3) Organizations and foundations that have an interest in the issues of federalism and the imposition of federal mandates on state and local governments.

(b) The issues addressed in the requests for information issued pursuant to this section shall include the following:

(1) Identification of federal mandates expressing broad federal policies that would best be implemented on a state by state basis or that could be resisted because of the unique circumstances that are present in each state and because of the unnecessary burdens that are created by federal regulations and policies;

(2) Legal theories that support the right of each state to implement or oppose federal mandates pursuant to the state's own policies;

(3) Practical methods, including the enactment of any state legislation, by which the state may fully exercise its authority in the implementation of federal mandates;

(4) Recommendations regarding federal legislation that would ensure that the states have the necessary authority to implement federal directives in a manner that is consistent with state policy and is suited to the needs of each state; and

(5) Possible funding sources for federal mandate efforts and opportunities for the state of Tennessee to match other funding sources or to cooperate with other entities in working towards federal mandate solutions.

(c) The requests for information prepared pursuant to this section shall require that the initial responses be received by the staff of the office of legislative services and the office of legislative legal services no later than October 31, 1995. The staff of the office of legislative services and the office of legislative legal services may prepare additional requests for information to follow up and obtain further details regarding the initial responses that were received.

SECTION 8. The staff of the office of legislative services and the office of legislative legal services shall examine the information received through the requests for information prepared pursuant to Section 7 of this act, and based upon such information, shall jointly present a report to the general assembly no later than December 1, 1995, that includes the following:

(1) Recommendations to the general assembly regarding:

(A) Contracts that the general assembly may enter into with specified persons or entities to conduct research, to analyze certain subjects, or to provide other services regarding federal mandates; or

(B) A request for proposals process to obtain bids for contracts to provide services regarding federal mandates with the intent that the contracts be entered into no later than February 1, 1996, and that the results of any research or analysis performed under such contracts be received by the general assembly no later than July 1, 1996; and

(2) Estimates of the cost of the federal mandate efforts recommended by the staff of the office of legislative services and the office of legislative legal services under the provisions of this section and recommendations regarding any possible public and

private sources of moneys to fund such efforts, including any appropriations by the general assembly that may be required.

SECTION 9. The comptroller of the treasury and the commissioner of finance and administration are authorized to promulgate rules and regulations to effectuate the purposes of this act. All such rules and regulations shall be promulgated in accordance with the provisions of Tennessee Code Annotated, Title 4, Chapter 5.

SECTION 10. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 11. The Tennessee Code Commission is directed to codify Sections 1 through 8, inclusive of this act as a new, appropriately designated chapter in Tennessee Code Annotated.

SECTION 12. For the purposes of promulgating rules and regulations to effectuate the purposes of this act, this act shall take effect upon becoming a law, the public welfare requiring it. For all other purposes, this act shall take effect July 1, 1995, the public welfare requiring it.